

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REVEREND ROBERT W. POVISH,

Plaintiff,

v.

CIVIL ACTION  
NO. 13-0197

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, JOHN E. WETZEL, in his  
official capacity as Secretary of the Pennsylvania  
Department of Corrections, MICHAEL  
WENEROWICZ, in both his official capacity as  
Superintendent of the State Correctional Institution  
at Graterford, and in his individual capacity, and  
MICHAEL ROMASCAVAGE, in both his official  
capacity as personnel officer of the State  
Correctional Institution at Graterford, and in his  
individual capacity,

Defendants.

**ORDER**

**AND NOW**, this 28th day of March, 2014, upon consideration of Defendants' Motion to Dismiss for Failure to State a Claim (Docket #4), Plaintiff's response, and all supporting papers, it is hereby **ORDERED** that the motion is **GRANTED IN PART AND DENIED IN PART** as follows:

1. Count I is dismissed without prejudice, and Plaintiff may file an amended complaint within twenty days.
2. Count II is dismissed with prejudice as to the Department of Corrections; the official-capacity claims against Wetzel, Wenerowicz, and Romascavage are not dismissed, but will be limited as explained in the accompanying memorandum; the individual-capacity claims against Wenerowicz and Romascavage are not dismissed, but Plaintiff shall file an

amended complaint within twenty days to better frame the qualified immunity issue.<sup>1</sup>

3. Count III is dismissed with prejudice as to the Department of Corrections, Wetzel, and Wenerowicz and Romascavage in their official capacities; the individual-capacity claims against Wenerowicz and Romascavage are not dismissed.
4. Count IV is dismissed with prejudice.
5. Count V is dismissed with prejudice.<sup>2</sup>

**BY THE COURT:**

**/s/ Jeffrey L. Schmehl**  
Jeffrey L. Schmehl, J.

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<sup>1</sup> Defendants' motion also requests that the Court strike claims for punitive damages against the Department and the officials in their official capacities under Count II. As the Count is dismissed entirely against the department and limited to narrow injunctive relief with respect to the official-capacity claims, punitive damages will necessarily be unavailable.

<sup>2</sup> Again, there is no need to rule on the Defendants' request to strike claims for punitive damages in Counts IV and V as those counts are dismissed with prejudice.